IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 14904 of 2005(Y)

PETITIONER:

KAJA NAJUMUDDIN, S/O.IBRAHIM,
RAWTHER, 25/332, NEAR NOORANI,
POST OFFICE, NOORANI, PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:
----

1. USHA PRASAD, W/O.RAJENDRA PRASAD,
PALLATHERUVIL, KOPPAM AMSOM,
PALAKKAD, NOW RESIDING AT THIRUTTAYUR
(THUTHIYUR), KAKKANAD, ERNAKULAM DIST.

2. E.SHAMSUDEEN, S/O.IBRAHIM RAWTHER,
THOTTUMKAL, YAKKARA AMSOM,
PALAKKAD.

BY ADVS SMT.V.P.SEEMANDINI -- R1
SMT.S.KARTHIKA
SRI.T.M.SUNIL –R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 14904/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PETITION IN IA NO. 1181/91 INOS NO. 222/91 ON THE FILE OF SUB COURT, PALAKKAD.

EXT.P2. COPY OF THE ORDER DT. 1/07/91 TO THE AMEEN.

EXT.P3. COPY OF THE JUDGMENT DT. 18/11/96 PASSED IN OS 222/91.

EXT.P4. COPY OF THE EP NO. 258/98 IN OS NO. 222/91.

EXT.P5. COPY OF THE KAICHEET EXECUTED BY THE PETITIONER AND THE R2.

EXT.P6. COPY OF THE DELIVERY ACCOUNT SUBMITTED BY AMEEN.

EXT.P7. COPY OF THE OBJECTION FILED BY THE PETITIONER.

EXT.P8. COPY OF THE EA NO. 230/00.

EXT.P9. COPY OF THE OBJECTION TO EXT.P8.

EXT.P10. COPY OF THE ORDER DT. 28/11/03 IN CRP NO. 1302/00.

EXT.P11. COPY OF THE DEPOSITION OF AMEEN.

EXT.P12. COPY OF THE EA NO. 419/04 IN EP NO. 258/98 IN OS NO. 222/91.

EXT.P13. COPY OF THE EA NO. 420/04 IN EP NO. 258/98 IN OS NO. 222/91.

EXT.P14. COPY OF THE ORDER DATED 21/08/04 IN EA NO. 230/00 IN EP NO. 258/98 IN OS NO. 222/91 ON THE FILE OF THE SUB COURT, PALAKKAD.

EXT.P15. COPY OF THE MEMO DT. 09/07/04 ALONG WITH RECIEPT DT. 26/12/03 ISSUED BY THE COUNSEL FOR THE R1.

EXT.P16. COPY OF THE COUNTER FILED BY THE RESPONDENT NO. 2 HEREIN IN EP NO. 258/98 IN OS NO. 222/91 ON THE FILE OF SUB COURT, PALAKKAD.

RESPONDENT'S EXHIBITS **NIL.**

True copy

tga

PIUS C. KURIAKOSE, J.

W.P.(C) NO.14904 of 2005

Dated this the 26th day of June , 2007

JUDGMENT

Under challenge in this writ petition filed under Article 227 of the Constitution of India is Ext.P14 order passed by the Subordinate Judges Court, Palakkad in E.A. No.230/2000 in E.P. No. 258/1998 in O.S. No.222/91. The prayer in the E.A. was that the warrant of arrest issued by the Court be withdrawn. The petitioner was not a party to the suit, which was filed by the first respondent against the 2nd respondent for recovery of money which had been allegedly advanced by the first respondent to the 2nd respondent towards the purchase of immovable property. Along with the suit, I.A. No.1181/91 for attaching the stage carriage bus bearing registration number KRE 9016 allegedly owned by the 2nd respondent, was filed. On considering that I.A., the Subordinate Judge passed an order directing attachment of the vehicle and entrustment of the vehicle to the first respondent, if he is prepared to take it. Ext.P1 is a copy of the attachment application and Ext.P2 is a copy of the order. The vehicle after attachment was released to the 2nd respondent on the basis of Ext.P5

Kai chit to which apparently the petitioner is a party. The suit was disposed of by Ext.P3 judgment. The Execution Petition Ext.P4 was filed seeking recovery of the amounts. In Ext.P4 Execution Petition, the petitioner is arrayed as the additional 3rd respondent Kaichitdar and the court issued arrest warrant against the petitioner. He filed E.A. No.230/2000 for recalling the warrant. The court dismissed that application. Ext.P8 is a copy of that order. Aggrieved by Ext.P8, the petitioner preferred CRP No.1302/2000 and aggrieved by the consequential order, the petitioner preferred CRP 2010/2000. By Ext.P10 common order, both the CRPs are disposed of remanding the case back to the Execution Court for holding a fresh enquiry on condition that the petitioner pays Rs.50,000/- by cash to the decree holder within one month. The above condition was complied with and the matter was reconsidered. Ext.P14 is the order passed on such reconsideration.

3. Very elaborate submissions were addressed before me by Sri.Sajan Varghese, Smt.S.Karthika, counsel for the first respondent and Sri.T.M.Sunil, the learned counsel for the 2nd respondent. Sri. Sajan Varghese would assail Ext.P14 as best as he could on the various grounds raised in the writ petition on her part. Smt.S.Karthika would justify Ext.P14. According to her, the petitioner is colluding with

the 2nd respondent, who is said to be his own brother in law, and the objective is only to protract the realisaction of the decree debt by the first respondent. According to her, it is the duty of the Execution Court to ensure that the decree holder secures the fruits of the decree at the earliest.

The persuasive submissions of Sri.Sajan Varghese notwithstanding, I am unable to agree that Ext.P14 is vitiated to the extent of warranting correction by this court under visitorial jurisdiction. I confirm Ext.P14. At the same time, considering the present financial position of the writ petitioner, there will be a direction to the Execution Court to keep in abeyance the arrest of the petitioner till 31.3.2008. The Execution Court shall ensure during this period that the decree is executed against the other debtors in this case by issuing whatever coercive processes which are possible against them. The order of arrest, which will become operative by 1.4.1998, need be executed only if in the meanwhile it has not been possible to realise the decree debt in full.

PIUS C. KURIAKOSE,
JUDGE.

dpk